

REMARKS

The final Office action of December 11, 2009 has been received and reviewed. All claims stand rejected. Clarifying amendments are to be made to the application as previously set forth. All amendments and claim cancellations are made without prejudice or disclaimer. Reconsideration is respectfully requested.

Support for the proposed amendments can be found in to be canceled claim 25, and in the specification at paragraphs [0059], [0079] to [0080], and Example 9. No new matter has been added.

Double Patenting:

The provisional obviousness-type double patenting rejection over USSN 11/407,103 to claims 1, 2, 4-7, 12, 13, and 20-24 was maintained. The applicants note that claim 25 (claiming the hEGF as a fusion protein between hEGF and P64K) was not so rejected. As discussed in more detail herein, independent claims 1, 22, and 26 have been amended to now include the elements of claim 25, which itself has been canceled. In view of such amendments, it is respectfully submitted that the subject matter of the claims of the present application and co-pending USSN 11/407,103 are patentably distinct, and the obviousness-type double patenting rejection should be withdrawn.

35 USC § 112:

Claims 1, 4 - 6, 12, 13, and 21-26 stand finally rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. It was asserted that the claims contain subject matter which was not described in the Specification in such a way as to reasonably convey to one skilled in the relevant art that the invention was, at the time of the application was filed, had possession of the claimed invention. It was indicated that the rejection was a new matter rejection.

It was stated that independent claims 1, 22, and 26 recite compositions comprising a fusion protein between hTGFalpha and P64K, an adjuvant and hEGF. The Examiner stated that hEGF is not fused to a carrier protein. It was further stated that the passages pointed to by the applicants for providing support for the amendments to the claims do not provide support for

claims drawn to compositions comprising a fusion protein between hTGFalpha and p64K, an adjuvant, and hEGF.

Independent claims 1, 22, and 26 have been amended to define the fusion protein as a fusion protein between hTGFalpha, hEGF, and P64K. As previously identified, support for these amendments can be found in the specification at paragraphs [0059], [0079] to [0080]. Furthermore, Example 9 clearly discloses the presently claimed fusion protein. In view of these amendments, the claims should not be considered as directed to new subject matter. Reconsideration and withdrawal of the rejection are respectfully requested.

ENTRY OF AMENDMENTS

Pursuant to 37 C.F.R. § 1.116, the applicants respectfully submit that the amendments presented herein should be entered as they are made to expedite prosecution, are believed to remove issues for appeal, and should place the application in condition for allowance.

The applicants respectfully note that, as indicated at MPEP § 714.13(III), the Examiner is required to give the proposed amendments sufficient consideration to determine whether the claims are in condition for allowance and/or whether the issues on appeal are simplified. The applicants respectfully submit that the amendments avoid the rejections set forth in the Final Office Action, raise no issues of new matter, present no issues requiring further consideration or search, and do not present any additional claims. If the Examiner determines that the amendments do not place the application in condition for allowance, entry is respectfully requested as they remove issues for appeal. As such, the applicants respectfully request that the amendments presented herein be entered and a Notice of Allowance issued.

If questions remain after consideration of the foregoing, the Office is kindly requested to contact applicants' attorney at the address or telephone number given herein.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Allen C. Turner', written in a cursive style.

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